THE SHELL CO. OF THE FEDERATION OF MALAYA v. PRESIDENT, TOWN COUNCIL BANDAR PENGGARAM, BATU PAHAT

[O.C.J. (Adams J.) May 27, 1962]

[Muar — Originating Motion No. 2 of 1962]

Rating — Assessment — Improved value — Whether bringing fuel tanks on to holding improves value of the holding — Whether fuel tanks are buildings or structures connected with buildings — Town Boards Enactment (Johore) No. 118, ss.25, 26, 28 and 44.

The improved value under section 28 of the Town Boards Enactment must be worked out not on the sale price of a holding as used for a specific purpose that is to say, in this case, a petrol station, but what it would fetch in its improved state in the general market.

The value of the holding must relate to the value of the land as permanently altered by the erection of buildings or structures connected to buildings. In this case as the tanks in question were not buildings or structures connected with buildings, they were wrongly included in the improved value of the holding under section 28 of the said Enactment.

Cases referred to:—

(1) *Dilworth* v. *Commissioner of Stamps* [1899] A.C. 99, 106.
(2) *Cardiff Rating Authority* v. *Guest Keen Baldwins Iron & Steel Co. Ltd.* [1949] 1 All E.R. 27, 37.
(3) *B.P. Refinery (Kent) Ltd.* v. *Walker* [1957] 1 All E.R. 700, 716.
(4) *Shell-Mex and B.P. Ltd.* v. *Holyoak* [1959] 1 All E.R. 391.
(5) *South Wales Aluminium Co. Ltd.* v. *Assessment Committee for the Neath Assessment Area* [1943] 2 All E.R. 587, 592.
(6) *London and South African Exploration Co. Ltd.* v. *De Beers Consolidated Mines* [1895] A.C. 451.
(7) *Smith* v. *City Petroleum Co. Ltd.* [1940] 1 All E.R. 260.

APPEAL BY WAY OF ORIGINATING MOTION.

A. L. Hills for the appellant.

Goh Bin Lay for the respondent.

Cur. Adv. Vult.

Adams J.: This is an appeal by the Shell Company of the Federation of Malaya Ltd. brought by way of Originating Motion under the provisions of section 44 of the Town Boards Enactment (Johore Laws Enactment No. 118) which is hereinafter referred to as the Enactment, against the rating assessment imposed upon a holding held by the appellant company under Certificate of Title No. 2761 Lot No. 378 Pt. by the Town Council, Bandar Penggaram, Batu Pahat, under the provisions of section 28 of the Enactment on an improved value of $81,125.

It will help, I think, if I set out the facts which fortunately are in no way in dispute. These facts are taken from the very full and clear report of Mr. John Carter, the appellant company's Chartered Surveyor, which is filed as an exhibit to the affidavit of Mr. Whetton filed on the 21st March, 1962.

In May 1961 the Shell Company of the Federation of Malaya purchased land having an area of 15,615 sq. ft. approximately being part of Lot 378 held under Certified Title No. 2761 and situated at Jalan Kluang in the Town of Bandar Penggaram in the District of Batu Pahat.

The company proceeded to develop the land by constructing a petrol filling station in accordance with plans submitted to and approved by the Batu Pahat Town Council. The Filling Station was completed on or about 23rd September, 1961.

On 12th October, 1961 the company submitted to the Batu Pahat Town Council a return under section 38 of the Johore Town Boards Enactment (No. 118) which stated that the property was purchased in May 1961 with vacant possession for a price of $45,000 and that the cost of improvements erected was $36,125.

On 21st October, 1961 the Batu Pahat Town Council wrote a letter to the company asking whether the amount of $36,125 included the cost of tanks and other installations.

The Batu Pahat Town Council was informed that the figure of $36,125 included the cost of tanks and that there were no other installations.

On 15th January, 1962 the Batu Pahat Town Council served on the company a notice proposing an assessment of the Holding, Lot 378 Pt., at an improved value of $81,125. This value was stated to comprise. land at a value of $45,000 and a pump station valued at $36,125.

By a letter dated 18th January, 1962 the Batu Pahat Town Council was informed that the improved value of $81,125 included an amount of $6,695 for underground tanks which should not be assessed.

On 27th January, 1962 the Batu Pahat Town Council informed the company that the letter dated 18th January, 1962 was accepted as an objection and this objection would be heard by the Council on 12th February, 1962.

On 12th February, 1962 the Batu Pahat Town Council heard the representative of the company. During the course of the hearing it was established that the figure of $36,125 included the cost of a brick pit containing one of the underground storage tanks and that the included amount of $6,695 referred only to the cost of the underground tanks themselves. The company's representative did not dispute liability to assessment in respect of the brick pit containing one of the underground storage tanks, the included cost of this item being $1,800. The objection was confined only to the underground tanks themselves. It was argued that these tanks should not be assessed and in consequence the improved value should be reduced by the amount of $6,695. No objection was raised in respect of any other portion of the proposed improved value.

The two petrol storage tanks are buried below the surface of the turfed area. Both tanks are cylindrical in shape and formed out of ¼ inch to ⅜ inch mild steel plate. They were manufactured to completion in workshops and transported by lorry to the site.

One of the tanks has an internal diameter of 6 ft. 11½ inches and 13 ft. 6 inches long. The weight is 1.84 tons and the capacity is 3,000 gals. or 13.40 tons. This tank is buried in the ground with the top approximately 2 ft. 3 inches below ground level. This tank is provided with manhole access for cleaning purposes and is used for storing Shell Diesoline. An 18 inch by 9 inch concrete slab is cast on either side of the tank to act as a counterweight to the buoyancy of the tank. If this counterweight was not provided the tank would have a tendency to float out of the ground, if the ground water rose to a sufficiently high level.

The second tank has an internal diameter of 7 ft. 11½ inches and is 13 ft. 8 inches long. The weight is 2.12 tons and the capacity is 4,000 gals. or 17.86 tons. It is divided into two compartments by a mild steel bulkhead. One compartment is used for storage of Supershell Petrol and the other compartment is used for storage of Shell Regular Petrol. The tank is emplaced in a pit measuring 15 ft. 8 inches long by 10 feet wide by 10 ft. 3 inches deep with 9 inch brick walls and a 9 inch thick concrete floor. The tank rests on a mass concrete stool. The pit is closed over by a mass concrete slab 6 inches thick. The top of the tank is approximately 2 feet below ground level. The space between this tank and the walls of the pit is filled with dry sweet sand.

It will therefore be seen that the only quarrel that the appellant has with the assessment is that there has been included in the improved value the cost of the two fuel storage tanks. It will therefore be necessary to look at the provisions of the Enactment which entitle the Town Board to levy the rate. Power to impose rates is conferred by sections 25 and 26 of the Enactment and the basis of the rate is contained in the amended section 28(i) of the Enactment. This reads as follows:—

"Any rate or rates imposed under this Part shall be assessed upon the improved value of holdings."

The basis of the assessment is, therefore, the improved value of the holding and improved value of land is defined in section 2 of the Enactment as:—

"'Improved value' of land means the capital sum which the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require;"

but since the assessment is to be based upon the improved value of the holding it is also necessary to consider the definition of holding. This is defined in section 2 as follows:—

"'Holding' means any land, with or without buildings thereon, which is held under a separate document of title, provided that for the purposes of Part IV of this Enactment it shall not include mining land;"

If therefore the holding consists of land on which there are buildings, it follows that the value of the buildings must also be taken into consideration when assessing the improved value of the holding, and buildings are defined in section 2 as follows:—

"'Building' includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall, fence, platform, septic tank, staging, gate, post, pillar, paling, frame, hoarding, slip, deck, wharf, pier, jetty, landing-stage or bridge, or any structure connected with the foregoing;"

The question to be resolved, therefore, is whether the bringing of the fuel tanks on to the holding improves the value of the holding.

Mr. Anthony Hills who appeared to argue the appeal for the appellant company maintained that in no sense of the word could the fuel tanks possibly come within the definition of buildings as defined in the Enactment and therefore the mere fact that they were brought on to the land did not improve its value. He pointed out that the word 'include' in the definition section of a statute is a device used to enlarge the words and phrases in the body of a statute and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify by their natural import, but also those things that the interpretation clause says they shall include. "But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include' and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions" (see the judgment of Lord Watson in *Dilworth* v. *Commissioner of Stamps* [1]). The fuel tanks would clearly not fall within the definition of buildings in the narrow interpretation put upon the word 'include' by Lord Watson, and if the wider interpretation of the word 'included' is used, Mr. Hills argued that since tanks are not included specifically in the definition, by their natural import, they cannot possibly be referred to or be considered to be buildings. He submitted that before anything can be considered to be a building it must be of substantial size, constructed *in situ*, only to be removed by demolition and it must be attached to the realty. He cited in support for this the judgment of Jenkins J. in *Cardiff Rating Authority* v. *Guest Keen Baldwins Iron & Steel Co.* [2]. He also pointed out that a piece of plant that in its natural import was not a building or a structure connected to a building did not necessarily become so because it was large or because when set up in a battery and was of considerable size and height (see the judgment of Denning L.J. in *B.P. Refinery (Kent) Ltd.* v. *Walker* [3]). He said that the fuel tank remained a fuel tank and did not merge with the structure in which it

was housed. Finally, he cited *Shell-Mex and B.P., Ltd.* v. *Holyoak* [4] in which this point was considered and it was held by a majority of the Lords of Appeal in Ordinary that fuel tanks at a petrol station did not fall within purview of section 24 of the Rating and Valuation Act, 1925, and the Plant & Machinery (Valuation for Rating) Order, 1927 and of Schedule 3 to the Act as settled by the Order of 1927.

Mr. Goh Bin Lay who appeared for the Town Council argued that since the assessment was based on the improved value, any improvement made to the land must improve the value. He argued that the holding is used as a petrol station, and that since the improved value is the capital value that the land would realise if sold on reasonable terms and conditions by a *bona fide* vendor, the fuel tanks must be included in the capital value because a petrol station would be useless without fuel storage tanks, and they were fixtures attached to the land which could not be removed without damaging the holding. He also drew attention to the fact that three Lords Justices of Appeal and two Lords of Appeal in Ordinary had come to the conclusion in the *Shell-Mex* case [4] that the tank when placed in its bed of sweet sand and anchored with its concrete blocks and covered in with its concrete slab then became "in the nature of a structure". He also drew attention to the fact that Lord Reid apparently agreed with that proposition but was constrained to find contra for the purpose of rating because of the wording of the legislation. That being the case, Mr. Goh submitted that the Court should take the commonsense view that once the fuel tanks are buried in their bed, they merge into the concrete pit in which the bed is laid and become as Lord Denning said 'in the nature of a structure' which is connected with the building which is the pit.

Mr. Anthony Hills in reply pointed out that Lord Denning conceded that the tank when buried remained a tank but then became "in the nature of a structure". He argued that this was not enough under the Enactment. It must either fall within the definition of building in section 2 or be a structure connected with a building. To be in the nature of a structure was not sufficient. On the question of what is a structure he asked the Court to follow the definition contained in *South Wales Aluminium Co. Ltd.* v. *The Assessment Committee for the Neath Assessment Area* [5]. He said that Mr. Goh's argument that everything improving the holding on the holding at the time of the assessment whether it were a building or not must be included is fallacious and if that were so it would include all the trade fittings and other machinery that could not possibly be classified as a building such as the fittings in the kiosk, typewriters, air balance machinery and so on. The fuel tanks if the holding were sold would not be included in the sale of the holding but would be the subject of a separate contract.

I do not think, to start off with, that the very wide interpretation put upon improved value by Mr. Goh is correct. This would in fact mean that all the machinery and trade fixtures such as the petrol pumps which are not fixtures that attach to the land would also be improvements, and would also have to be included, in the capital value of the holding. I think that the improved value must be worked out not on the sale price of a holding as used for a specific purpose that is to say, in this case, a petrol station, but what it would fetch in its improved state in the general market. In *London and South African Exploration Co. Ltd.* v. *De Beers Consolidated Mines* [6] it was sought to confine "improvement" in relation to certain land to erections not affixed to the soil. Lord Macnaghten rejected that argument. He said at page 455, "But that is not the natural or proper meaning of the expression, which seems to be more applicable to something attached to and forming an integral part of the thing improved than to something which is merely added to it or placed upon it without annexation or union". The fuel tanks may well be a fixture which would pass to a landlord, and it was so admitted (although the point was not argued) in *Smith* v. *City Petroleum Co., Ltd.* [7]. But the tanks lying as they do in a pit would not appear to me to be attached to or forming an integral part of the holding. Of course it would be impossible to run the business of a petrol supply station without them, but the holding could be used for other purposes without them. It would seem to me, therefore, that Mr. Anthony Hills was right when he argued that in this case the improved value of the holding must relate to the value of the land as permanently altered by the erection of buildings or structures connected to buildings.

Are therefore the fuel tanks buildings or structures connected with buildings? I do not think that they can be so described. I think that the matter is clinched by the dissenting judgment of Lord Denning in the *Shell-Mex* case [4] who, although he agreed with the Court of Appeal in considering that the metal cylinders forming the tanks were built into the structure of the pit so as to form one integral whole with it, he goes on to say that it is a matter of indifference whether one calls the whole thing a tank or only the metal cylinder a 'tank' so long as it is agreed that in either case it is the nature of a structure. If it be in the nature of a structure that is sufficient to make it rateable as part of the hereditament under section 24 of the Rating and Valuation Act, 1925 but it does not bring it within the definition of a building under the Enactment. Lord Denning did not apparently agree with the reasoning of the Court of Appeal. He said at page 402:—

> "They emphasised, just as I would wish to do, the fact that the metal cylinder was built into the brick and concrete structure so as to form one integral whole; and on that account they held it to be rateable as part of the hereditament. I entirely agree with them in the result, but I would use a somewhat different line of reasoning or, perhaps I should say, a somewhat different terminology. Lord Evershed M.R., and Parker L.J., seem

to have regarded the whole installation as a 'tank' which was in the nature of a structure; whereas I think the metal cylinder still remains a 'tank' but, by being built into one whole structure, it partakes of the nature of a structure."

Viscount Simonds pointed out that under the relevant legislation, the tanks only became rateable (*inter alia*) if they were buildings or structures in the nature of buildings or structures. It would seem, then from reading Lord Denning's judgment, that he certainly would not agree that the tanks were buildings or structures. Both in the extract that I have cited above and at the end of his judgment he makes it clear that the metal cylinders are merely when *in situ* in the nature of structures. Viscount Simonds was of the opinion that the metal cylinders were 'tanks' which were housed within a structure and that the whole installation did not itself form a tank, and he did not consider that any finding of fact in that case (and the facts in that case are identical to those in the present case) would justify finding that the metal cylinders emplaced as they were in that case and are in the present case could be a building or structure or in the nature of a building or structure.

If I am right in holding that the improved value of a holding must be based on the land and such things brought on to the land that attach to and form an integral part of the land, that is to say, on the facts of this case, the buildings, then the cost of the tanks must be excluded from the assessment because they are not buildings as defined under the Enactment. This I think must be correct. The basis upon which a ratepayer is to be assessed is a matter for the legislature. If the ratepayer were to be expected to pay on everything that he brought on to his holding for his own comfort or business which might in the widest sense be called an improvement, the law would have said so. It has not done so. It merely bases the assessment on the improved value of the holding which is the capital sum which the holding (that is to say the land and any buildings on it) would be expected to realise if offered for sale on such reasonable terms as a *bona fide* vendor would require. These tanks were not buildings. They might as Viscount Simonds has said in the *Shell-Mex* case [4] probably be described as being a physical entity with buildings but as he further pointed out the metal containers were physical entities when they were put in the compartment and they remain physical entities when they lie there and would still be physical entities if they were taken away as they easily could be. Mr. Anthony Hills underlined this when he said that in any sale of the holding the tanks would be the subject of a separate contract. In my opinion the tanks were wrongly included in the improved value of the holding upon which the assessment under section 28 of the Enactment was made.

This appeal must therefore be allowed and the assessment of the improved value by the Town Council varied by deleting the sum of $6,695, that is to say the cost of the two fuel tanks from the sum of $81,125 the original sum assessed in respect to the appellant company's holding making the improved value upon which the appellant company must be assessed the sum of $74,430. The Town Council must pay the costs of the appeal.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Goh Bin Lay & Co.*

VALLIAMAI v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) May 31, 1962]

[K.L. — Criminal Appeal No. 21 of 1962]

Criminal Law and Procedure — Bail bond — Application for discharge — Forfeiture of bond — Criminal Procedure Code (F.M.S., Cap. 6), ss.393 and 404 — Discretion.

The relevant provisions relating to forfeiture of a bond are in section 404 of the Criminal Procedure Code (Cap. 6) which provides for "any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid." This makes it clear that, upon sufficient cause shown, forfeiture may be waived altogether, which subsection (v) further states in specific terms, that the Court has a discretion to "remit any portion of the penalty mentioned and enforce payment in part only." Careful consideration, therefore, ought to be given by Magistrates to the question in two stages, first, has sufficient cause been shown against forfeiture; secondly, if not, are the circumstances such that the whole sum of the penalty ought to be enforced.

In this case there was sufficient cause shown against the forfeiture because the appellant had gone to Court twice for the express purpose of being relieved of her bond and had been advised by the Registrar of the Sessions Court to make her application in Court when the case next came up for hearing, and at which hearing she had no opportunity to make her application to the President. Under section 393(i) of the Criminal Procedure Code her application could have been dealt with then and there either by the President or if he was not available, by the Registrar as such Registrar is an ex-officio gazetted 2nd class Magistrate.

CRIMINAL APPEAL.

T. Selvarasan for the appellant.

H. Sankey (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant, as bailor for her son-in-law, Sivayogam, who was the accused in certain criminal proceedings in the Sessions Court, Kuala Lumpur, signed a bail bond on October 5, 1961 as surety for the attendance in